



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0271]

Drawbridge Operation Regulation; New River, Fort Lauderdale,
FL.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Florida East Coast Railway (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL. This proposed rule implements requirements for the operator designed to ensure that adequate notice of bridge closure times are available to the waterway traffic. It also changes the on demand schedule to an operating regulation requiring the bridge to be open at least 60 minutes in every 2 hour period. Modifying the bridge operating schedule will allow the bridge owner to operate the bridge remotely with assistance from the onsite bridge tender.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date **30** days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0271 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Rod Elkins with the Coast Guard; telephone 305-415-6989, e-mail Rodney.J.Elkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code
FEC	Florida East Coast Railway

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a

comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions.

Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

B. Regulatory History and Information

From May 18 through October 16, 2015, a test deviation was in effect for the FEC Railroad Bridge (80 FR 28184). The comment period ended on 17 August 2015. There were eight comments received from the test deviation. Of these comments, three comments expressed opposition to a future rail project, which we would like to emphasize, is not the focus of this proposed regulation. One comment opposed the proposed modification and recommended a schedule of four 15 minute openings every two hours. Based on input from the bridge owner and input gathered at Coast Guard public meetings, the Coast Guard determined that this is not a viable option because trains would have considerable difficulty coordinating passage across the bridge with this schedule. Additionally, it would not benefit waterway users, because the proposed regulation provides for the same minimum opening times in a two hour period, and it is more flexible because the bridge will remain open when trains are not crossing. The remaining four comments supported the proposed modification, but recommended minimum time limits to bridge openings. A temporary deviation was conducted and waterway users were satisfied with the operating schedule implemented, but requested a minimum time limit of 15 minutes for each opening. We refrained from specifying such limits because these limits would require the bridge to remain

open for 15 minutes or more when less time may be adequate for vessel traffic to pass. For example, if the bridge was closed for a train crossing and another train was crossing five minutes later, the bridge would remain closed until the later train passed. Establishing a minimum amount of time for the bridge to remain open could unduly restrict the tender from conducting a short duration opening to allow a vessel through. The Coast Guard anticipates the proposed regulation will meet or exceed the recommended minimum time limits while allowing for more flexibility to accommodate vessel traffic.

One of the eight comments requested a public meeting. A public meeting was held on 12 November 2014, and the proposed schedule modification was developed from the input received from the public meeting.

C. Basis and Purpose

Presently, in accordance with 33 CFR 117.5, the FEC Railroad Bridge is required to open on signal for the passage of vessels.

Prior to implementing a test deviation on May 18, 2015, the Bridge operated without a tender or monitor. An automated system closed the Bridge when a train approached and reopened the Bridge when a train cleared. The Coast Guard received multiple complaints from mariners because there was no means of obtaining notice of bridge closure times or potential

closure duration. The proposed schedule, discussed further below, balances the reasonable needs of waterway traffic on the New River with train traffic moving through condensed population areas such as Ft. Lauderdale where train schedules at the crossings cannot be precisely timed because of delays caused by train car loading and vehicular traffic crossing the track.

Also, train bridges must be in the down position well in advance of the train's arrival to ensure that it can safely navigate the bridge or stop if there are problems with the bridge. The purpose of this proposed regulation is to improve navigation on the New River through increased communications and closure time limits.

The FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL is a single leaf bascule bridge. It has a vertical clearance of 4 feet at mean high water in the closed position and horizontal clearance of 60 feet. Traffic on the waterway includes both commercial and recreational vessels.

D. Discussion of Proposed Rule

This proposed rule is for the draw of the FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL, to operate as follows:

- (a) The bridge shall be tended constantly.

(b) The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.

(c) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of the time remaining before bridge closure shall be posted at the bridge site and visible for maritime traffic.

(d) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(e) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(f) When a train approaches, the lights flash red and a horn starts four blasts, pauses, and then continues four blasts, then the draw lowers and locks.

(g) After the train has cleared the bridge, the draw opens and the lights turn to green.

(h) The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m. each day.

(i) The bridge shall remain open to maritime traffic when trains are not crossing.

E. Regulatory Analyses

We developed this proposed rule after considering

numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulatory action is not a significant regulatory action because it will still allow vessels to pass through the bridge at more consistent intervals while taking into account the reasonable needs of other modes of transportation.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of

less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the bridge may experience delays when the bridge is closed to allow train crossings. Vessels will still be allowed to transit this waterway but at more consistent and shorter intervals. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the

person listed in the FOR FURTHER INFORMATION CONTACT, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant

rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary

determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.313, revise paragraphs (c), (d) and (e) to read as follows:

* * * * *

(c) The following requirements apply to the Florida East Coast Railway Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL:

1. The bridge shall be constantly tended.
2. The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.
3. Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.
4. A bridge log will be maintained including, at a minimum, bridge opening and closing times.
5. When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.
6. When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts then the draw lowers and locks.
7. After the train has cleared the bridge, the draw opens and the lights return to green.
8. The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m. each day.

9. The bridge shall remain open to maritime traffic when trains are not crossing.

(d) Reserved

(e) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

Dated: October 22, 2015

S. A. Buschman,
Rear Admiral, U.S. Coast Guard,
Commander, Seventh Coast Guard District

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